Thavanathan a/l Balasubramaniam v Majlis Peguam Negara

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R–17B–26 OF 2005
ABDUL MALIK ISHAK, T SELVENTHIRANATHAN AND MOHD HISHAMUDIN JJ
28 SEPTEMBER 2006

Legal Profession — Restoration of name to roll of Advocates and Solicitors — Principles to be applied in considering application — Legal Profession Act 1976 s 107 — Whether the applicant was a fit and proper person to have his name restored to the Roll

The applicant, Thavanathan a/l Subramaniam filed a notice of originating motion (encl 1) to seek his restoration to the Roll of Advocates and Solicitors of the High Court of Malaya under s 107 of the Legal Profession Act 1976. The respondent, however, vehemently objected to the application on grounds that (a) this Court was asked to look at the nature of the offence that the applicant was convicted for; and (b) the lack of penitence or repentance and the lack of acceptance of the consequences of the grave wrong committed by the applicant that should be looked into. Counsel for the respondent also submitted, inter alia, that the applicant had not demonstrated that he had truly accepted the importance of integrity in the administration of justice and further pointed out that the applicant's conduct demonstrated that the applicant did not believe that he should have been struck off the Roll despite his conviction by the highest court in this country. In reply, counsel for the applicant submitted that what the applicant did by appealing through the right procedures showed that the applicant went through the process of the law that was accorded to him and to others in like situations. Counsel for the applicant also submitted that the applicant had repented and that this was reflected in the applicant's affidavit in support.

Held, dismissing the application with no order as to costs:

(1) The applicant has not shown in any way that he is a fit and proper person to be restored to the position of trust as expected of an Advocate and Solicitor. It is of great importance to demonstrate to the public at large, and particularly to the profession, that dishonest conduct demands a severe penalty which may be mitigated by a lapse of a certain number of years (see para 3).

(2) It is not a rule of law that an Advocate and Solicitor who has been struck off the Roll for dishonesty can never be reinstated. The onus is on the applicant to show that he is a fit and proper person to have his name restored to the Roll. It is a heavy burden to discharge (see para 3).

(3) The fact that the applicant had served the sentence, by itself, is not sufficient for him to come within the ambit of s 107(1) of the Legal Profession Act 1976 (see para 14).

(4) Sufficient time lapse must prevail between the time the applicant was disbarred to the time the applicant applied for reinstatement. With the passage of more time and the growing maturity of the applicant, the applicant may be able to demonstrate to the satisfaction of the Court his sincerity in repenting his past misdeeds (see para 17); *Ex parte Clyne; Re Bar Association of NSW* [1962] NSWR 709 followed.

(5) The applicant had never accepted the consequences of his conviction especially that part when he was struck off the Roll on 12 June 2002. Calculation wise the applicant filed his originating motion (encl 1) exactly one year, eight months and five days after the decision of the Federal Court. The passage of time is too short for comfort. Obviously, it was also too soon for the applicant here to apply for restoration to the roll. He must be patient. He must be willing to endure the long wait before he files, once again, for reinstatement to the roll (see paras 20 & 22); *Re Lim Cheng Peng* [1988] 1 MLJ 231; *Teoh Hooi Leong v Bar Council, Malaysia* [1991] 2 MLJ 190, referred.

(6) The lapse of time between the date of the order striking the name of the applicant off the Roll and the date of the application for restoration is far too short a time. The applicant also has not averred that he has repented in his affidavit in support (encl 2). The applicant's age also has a bearing when considering the originating motion in encl 1 (see para 24); *Re Lim Cheng Peng* [1988] 1 MLJ 231 referred.

[Bahasa Malaysia summary

Pemohon, Thavanathan a/l Subramaniam telah memfailkan notis usul pemula (Lampiran 1) bagi memohon pengembalian semula ke dalam Daftar Peguambela dan Peguamcara Mahkamah Tinggi Malaya di bawah s 107 Akta Profesyen Undang-Undang 1976. Responden, walaubagaimanapun, dengan kerasnya menentang permohonan tersebut dengan alasan-alasan bahawa (a) mahkamah ini diminta untuk melihat kepada sifat semulajadi kesalahan yang mana permohon telah pun disabitkan; dan (b) kekurangan sesalan atau penyesalan dan kekurangan penerimaan kesan-kesan kesalahan berat yang telah dilakukan oleh pemohon yang perlu dilihat. Peguamcara untuk responden juga menghujahkan, antara lain, bahawa pemohon tidak menunjukkan bahawa beliau telah benar-benar menerima kepentingan integriti dalam pentadbiran keadilan dan juga menyatakan bahawa kelakuan pemohon menunjukkan bahawa pemohon tidak mempercayai bahawa beliau sepatutnya dibatalkan daripada Daftar walaupun sabitan telah dibuat oleh Mahkamah Tertinggi dalam negara ini. Sebagai balasan, peguamcara untuk pemohon menghujahkan bahawa apa yang telah dilakukan oleh pemohon dengan merayu adalah melalui prosedur yang betul, menunjukkan bahawa pemohon telah melalui proses perundangan yang disediakan kepadanya dan juga orang lain yang mengalami situasi yang sama. Peguamcara untuk pemohon juga berhujah bahawa pemohon telah menyesal dan ini telah dinyatakan dalam afidavit sokongan pemohon.

Diputuskan, menolak permohonan dengan tiada perintah untuk kos:

(1) Pemohon tidak menunjukkan dalam apa cara sekalipun bahawa beliau adalah

layak dan teratur untuk dikembalikan semula kepada kedudukan amanah sebagaimana yang dikehendaki terhadap seorang peguambela dan peguamcara. Ia adalah amat penting untuk menunjukkan kepada orang-orang awam, dan khususnya kepada profesyen, bahawa kelakuan tidak jujur memerlukan hukuman yang berat akan dapat dikurangkan selepas tempoh beberapa tahun tertentu (lihat perenggan 3).

(2) Ia bukanlah kedaulatan undang-undang bahawa seorang peguambela dan peguamcara yang telah dibatalkan daripada Daftar kerana ketidakjujuran tidak boleh dikembalikan semula. Beban adalah pada pemohon bagi menunjukkan bahawa beliau adalah seorang layak dan teratur supaya namanya dimasukkan semula ke dalam Daftar Ia adalah beban yang amat berat untuk dilepaskan (lihat perenggan 3).

(3) Fakta bahawa pemohon telah menjalani hukuman, dengan sendirinya, tidak memadai untuknya dimasukkan dalam lingkungan s 107(1) Akta Profesyen Undang-undang 1976 (lihat perenggan 14).

(4) Tempoh masa yang sesuai hendaklah mengatasi antara masa pemohon dipecat kepada masa pemohon memohon untuk dikembalikan semula. Dengan berlalunya lebih banyak masa dan bertambahnya kematangan pemohon, pemohon akan dapat menunjukkan sehinggakan Mahkamah berpuas hati keikhlasannya dalam menyesali perbuatan jahatnya yang lalu (lihat perenggan 17); *Ex parte Clyne; Re Bar Association of NSW* [1962] NSWR 709, diikuti

(5) Pemohon tidak pernah menerima kesan-kesan sabitannya terutamanya pada bahagian beliau telah dibatalkan daripada daftar pada 12 Jun 2002. Mengikut perkiraannya pemohon telah memfailkan usul pemulanya (Lamp 1) genap satu tahun, lapan bulan dan lima hari selepas keputusan Mahkamah Persekutuan. Masa yang berlalu adalah terlalu singkat untuk penyesuaian. Jelasnya ia adalah terlalu awal untuk pemohon di sini memohon untuk pengembalian semula kepada daftar. Beliau seharusnya bersabar. Beliau harus bersedia untuk bertahan kepada penantian yang lama sebelum beliau memfailkan, sekali lagi, untuk dikembalikan semula kepada daftar (lihat perenggan 20, 22); *Re Lim Cheng Peng* [1988] 1 MLJ 231; *Teoh Hooi Leong v Bar Council, Malaysia* [1991] 2 MLJ 190, dirujuk.

(6) Tempoh masa antara tarikh perintah pembatalan nama pemohon dalam daftar dan tarikh permohonan untuk dikembalikan semula adalah terlalu singkat. Pemohon tidak menyatakan bahawa beliau telah menyesal dalam afidavit sokongannya (Lamp 2). Umur pemohon juga menjadi penentu apabila mempertimbangkan usul pemula di Lamp 1 (lihat perenggan 24); *Re Lim Cheng Peng* [1988] 1 MLJ 231, dirujuk.]

Notes

For the case on restoration of name to Roll of Advocates & Solicitors, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2014.

Cases referred to

Chan Chow Wang v Malaysian Bar [1986] 2 MLJ 159 (refd)
Chin Swee Oon, Re [1964] MLJ 124 (refd)
Ex p Clyne; Re Bar Association of NSW [1962] NSWR 709 (folld)
Ex p FE Maddocks Cohen (May 30, 1956), The Weekly Notes Vol 73, 126 (refd)
Ex p Macaulay [1930] 30 SR (NSW) 193 (refd)
Ex p Lenehan [1948–1949] 77 CLR 403 (refd)
In re Pyke (1865) 34 LJR 121 (refd)
Lim Cheng Peng, Re [1988] 1 MLJ 231 (refd)
PP v Wong Kim Fatt [1991] 3 CLJ 2188 (refd)
Teoh Hooi Leong v Bar Council, Malaysia [1991] 2 MLJ 190 (refd)
Public Prosecutor v Thavanathan [1994] 2 MLJ 436 (refd)

Legislation referred to

Legal Profession Act 1976 s 107(1)
Legal Profession Act (Cap 161, 1985 Ed) (Sing) s 99
Prevention of Corruption Act 1961 ss 3(a)(i), 4(a)

Mohd Shafee bin Abdullah (Frida Krishnan with him) (Shafee & Co) for the applicant.
SM Lim (Raja Daryll & Loh) for the respondent.

Abdul Malik Ishak J (delivering judgment of the court):

THE ORIGINATING MOTION

[1] By way of a notice of originating motion in encl 1, the applicant, Thavanathan a/l Balasubramaniam, (hereinafter referred to as the 'applicant') sought for the following orders:

(a) that the applicant be restored to the Roll of Advocates and Solicitors of the High Court of Malaya under s 107 of the Legal Profession Act 1976 ('the LPA 1976');

(b) that there be no order as to costs; and

(c) such further or other orders as this Honourable Court may deem fit.

THE FACTUAL MATRIX

[2] The facts leading to the filing of encl 1 may be stated as follows:

(1) the applicant was admitted and enrolled as an Advocate and Solicitor of the High Court of Malaya on 25 August 1989;

(2) on 1 December 1989, the applicant joined the Legal and Judicial services and was posted as a magistrate at the Kuala Lumpur Magistrate's court;

(3) on 28 November 1992, the applicant was charged for corruptly soliciting for himself a sum of RM15,000, an offence under s 3(a)(i) of the Prevention of Corruption Act 1961 ('the PA 1961') and he was also charged for corruptly accepting for himself a sum of RM15,000, an offence under s 4(a) of the

Prevention of Corruption Act 1961,these two charges were laid before the Sessions Court in Kuala Lumpur;

(4) on 8 March 1993, the learned sessions court judge discharged and acquitted the applicant of both the charges without calling for his defence because the prosecution failed to make out a prima facie case against him;

(5) the prosecution appealed and the High Court affirmed the acquittal and discharge in respect of corruptly soliciting for himself the money under s 3(a)(i) of the PA 1961; however, the High Court allowed the appeal for the offence of corruptly accepting the money for himself under s 4(a) of the PA 1961 and ordered the applicant to enter his defence in respect thereof;

(6) the case was then sent back to the learned sessions court judge, who, after hearing the defence of the applicant acquitted and discharged the applicant of corruptly accepting the money for himself under s 4(a) of the PA 1961;

(7) the prosecution appealed to the High Court against the acquittal and discharge and on 25 April 1994, the learned High Court judge allowed the appeal and set aside the acquittal and convicted the applicant and sentenced him to three years' imprisonment and imposed a fine of RM5,000 in default 12 months' imprisonment, the decision of the learned High Court judge has since been reported vide *Public Prosecutor v Thavanathan* [1994] 2 MLJ 436;

(8) the applicant then appealed to the Supreme Court which heard the appeal on 21 March 1997 and the Supreme Court affirmed the conviction and sentence of three years imprisonment but set aside the fine of RM5,000 (see *Thavanathan a/l Balasubramaniam v Public Prosecutor* [1997] 2 MLJ 401);

(9) from 21 March 1997 to 20 March 1999, the applicant served the sentence at Kajang prison;

(10) after the applicant was released from Kajang prison, he applied to the respondent for his 1999 Sijil Annual in order to resume legal practice;

(11) by letter dated 15 June 1999 addressed to the applicant, the respondent agreed to issue him with the Sijil Annual 1999 but reserved its right to lodge a complaint against him with the Disciplinary Board;

(12) by letter dated 29 June 1999, the respondent lodged a complaint against the applicant with the Disciplinary Board;

(13) the applicant then resumed practice as a sole proprietor under the name and style of Messrs Ananthan & Partners from 3 July 1999 to 31 December 2000 and he ceased practice on 1 January 2001;

(14) thereafter the respondent's records show that the applicant joined Messrs N Saraswathy Devi as a legal assistant on 2 January 2002, and later, Messrs Huang Khairun Kumar & Associates from 17 April 2002 to 15 May 2002;

(15) the applicant's last practising certificate was for the year 2002 and this meant that he was in legal practice for slightly over two years;

(16) the applicant was struck off the Roll of Advocates and Solicitors of the High Court of Malaya on 12 June 2002 by order of the Disciplinary Board despite

A a recommendation by the Disciplinary Committee that he be suspended for six months;

(17) on 19 June 2002, the applicant appealed to the High Court against the Disciplinary Board's decision;

B (18) on 24 March 2003, the High Court dismissed the applicant's appeal with costs and the judgment of the High Court has since been reported vide *Thavanathan a/l Balasubramaniam v Majlis Peguam Malaysia* [2003] 3 MLJ 341;

(19) on 21 April 2003, the applicant appealed to the Federal Court against the decision of the High Court; and

C (20) on 30 October 2003, the Federal Court dismissed the applicant's appeal with no order as to costs.

IS THE APPLICANT A FIT AND PROPER PERSON TO HAVE HIS NAME RESTORED TO THE ROLL?

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[3] This is the crucial question posed before this Court. It cannot be assumed that re-instatement should automatically be granted. In his affidavit in support affirmed on 30 June 2005 as seen in encl 2, the applicant avers at para 15 that as a result of his conviction and striking off the Roll, he and his family members have suffered E hardship and humiliation. With respect, this is inevitable and cannot be a basis for his re-instatement. The applicant has also mentioned in the same para 15 of encl 2 that he did not gain from the crime for which he was charged. But the fact remains that the applicant was convicted and that shows that he had the intention to gain from the crime. The applicant has not shown in any way that he is a fit and proper person to be restored to the position of trust as expected of an Advocate and Solicitor. F It is of great importance to demonstrate to the public at large, and particularly to the profession that dishonest conduct demands a severe penalty which may be mitigated by a lapse of a certain number of years. It is not a rule of law that an Advocate and Solicitor who has been struck off the Roll for dishonesty can never be reinstated. The onus is on the applicant to show that he is a fit and proper person to have his G name restored to the Roll. It is a heavy burden to discharge.

[4] I have perused the report of the Disciplinary Committee as well as the letter of Miss Anita Sockalingam dated 8 March 2002 from Messrs Zain & Co as contained in exh 'T-2' annexed to the applicant's affidavit in support in encl 2. It is apparent H that the Disciplinary Committee had considered all aspects of the applicant's case including the fact that he had served his term of imprisonment and the long period of suspension from his employment coupled with the sentences meted out in similar cases against the following individuals (it is interesting to note that another panel of the High Court in its judgment regarding the same applicant, reported vide *Thavanathan a/l Balasubramaniam v Majlis Peguam Malaysia* [2003] 3 MLJ 341 at I p 351, also considered the same comparables):

(1) Mr Gooi Soon Seng;

(2) Mr Phang Ah Hee;

(3) Mr Wong Kim Fatt;

(4) The late Encik Rashid Ali Sickender; and

(5) Mr P Gnanasegaran

[5] The Disciplinary Committee placed emphasis on Gooi Soon Seng and Phang Ah Hee (both of whom were former deputy public prosecutors) and recommended to the Disciplinary Board that the applicant be suspended from practice for a period of only six months. The Disciplinary Board was of a different view and struck off the applicant from the Roll. It is submitted that the closest comparison in respect of the misconduct and punishment imposed would be that of the action taken against Mr Wong Kim Fatt (*PP v Wong Kim Fatt* [1991] 3 CLJ 2188) who was also struck off the Roll. A comparison will now be made between these two cases.

	Mr Wong Kim Fatt	The Applicant
1	Conviction: On the first principle charge of criminal breach of trust, an offence under s 408 of the Penal Code	Conviction: On the second charge of corruptly accepting money for himself, an offence under s 4(a) of the Prevention of Corruption Act 1961
2	Date of offence: Between 5 July 1976 and 14 April 1977	Date of offence: On 28 November 1992
3	Final Conviction: The Federal Court on 19 April 1983 dismissed the appeal and upheld the High Court's conviction of one year's imprisonment.	Final Conviction: On 21 March 1997, the Supreme Court affirmed the conviction and sentence of three years imprisonment but set aside the fine of RM5,000.
4	Served prison term: From 19 April 1983 to 20 December 1983, approximately eight months with 1/3 remission	Served prison term: From 21 March 1997 to 20 March 1999, approximately 2 years with 1/3 remission.
5	Struck off the Roll: in 1984. Applied for re-instatement on 28 October 1987. Reinstated in 1987.	Struck off the Roll: on 7 June 2002. Applied for re-instatement on 5 July 2005. Not re-instated as yet.

[6] It must be borne in mind that Mr Wong Kim Fatt committed the offence as a practising lawyer and he had to resign his Judicial Commissioner's post. The applicant, on the other hand, was a serving magistrate when he committed the offence. It is undeniable that corruption by a serving magistrate is a more serious offence as compared to an offence of a criminal breach of trust ('CBT') by a lawyer. I am asked to be magnanimous and to give the applicant a second chance. It is said that if I were to consider the case of *Wong Kim Fatt*, the applicant would be placed in a better light. I take into account that the applicant was 28 years old at the time of the offence and that he would be 42 years of age on 16 September 2006. Committing CBT while being at the bar goes principally to the heart of the economy. When the applicant committed that offence as a serving magistrate, it goes to the heart of the judiciary. The integrity of the judiciary must be maintained at all times.

[7] Section 107(1) of the LPA 1976 enacts as follows:

107. High Court may restore an advocate and solicitor

(1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll

[8] Ultimately, everything would be dependent on the facts of each case (*Re Chin Swee Oon* [1964] MLJ 124). According to Harun J, with Vohrah and Zakaria Yatim JJ concurring, in *Chan Chow Wang v Malaysian Bar* [1986] 2 MLJ 159 at p 160 it was stated that:

In re-admitting applicants to the Bar, the Court has a duty to litigants and to the legal profession to ensure that such persons are of the highest integrity and honour. The Court must also be satisfied, in the public interest, that the applicant is not likely to repeat these offences if he is re-admitted. The onus is therefore on the applicant to show that:

(a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;

(b) he is truly penitent; and

(c) he has made restitution.

[9] In the present case, the applicant has shown that:

(a) After the disbarment from Singapore he practised in Malaysia and observed the ethics of the profession;

(b) He has suffered professionally, socially and economically; and is truly repentent;

(c) He has made restitution.

[10] Barakbah CJ sitting with Ong and Gill JJ and writing for the court in *Re Chin Swee Oon* also spoke of the need for the applicant to be 'truly penitent' (at p 124) before re-instatement was allowed. In Singapore, in the case of *Re Lim Cheng Peng* [1988] 1 MLJ 231, Wee Chong Jin CJ sitting with Lai Kew Chai and Chua JJ construed the words 'if it thinks fit' that appeared in s 99 of the Legal Profession Act (Cap 161, 1985 Ed) to mean (see p 232):

A discretion is conferred by the legislature, which must of course be exercised judicially.

[11] His Lordship Wee Chong Jin CJ also spoke of the time factor for re-instatement in these salient words (see p 233):

We are of the view that unless there are exceptional circumstances, we would say that, as a general rule, no solicitor who has been struck off the roll ought to contemplate taking out an application under s 99 of the Legal Profession Act before the expiration of five years from the date of the order of striking off.

[12] The Supreme Court with a coram of Hashim Yeop A Sani CJ (Malaya), Harun Hashim and Mohamed Yusoff SCJJ in *Teoh Hooi Leong v Bar Council, Malaysia* [1991] 2 MLJ 190 at p 194 sets out the appropriate test, in the words of Hashim Yeop A Sani CJ (Malaya), in this way:

> In the final analysis the question here is simply whether on the materials available, it is fair and reasonable for the court to find that the appellant is a proper person to have his name restored to the Roll and it is not against the public interest to so order. Considering all the circumstances of the case it was certainly fair and reasonable to allow the appellant's name to be restored to the roll.

[13] The respondent vehemently objects to the applicant's originating motion in encl 1. The grounds for the respondent's objections are two-fold. First, this Court is asked to look at the nature of the offence that the applicant was convicted for. Second, the lack of penitence (being sorry) or repentance (regret) and the lack of an acceptance of the consequences of the grave wrong committed by the applicant should be looked into. What is of significance to the respondent is the fact that the offence was committed by the applicant while holding a judicial office as a magistrate. According to the respondent, the offence strikes at the very heart of the administration of justice, ie, its integrity. On the facts and by his conduct, the applicant has not demonstrated that he has accepted and has submitted to one of the fundamental dictates of the profession that integrity cannot be compromised. The Britannica World Language Edition of the Oxford Dictionary at p 1021 defines the word 'integrity' in this way:

> Soundness of moral principle; the character of uncorrupted virtue; uprightness, honesty, sincerity.

[14] The conduct of the applicant does not reflect all these virtues. The courts are widely known as the last bulwark of justice. Its justices including magistrates must be men of incorruptible integrity whose only goal is to dispense justice without fear or favour. Sad to say, the applicant here does not come up to that expectation. Magistrates occupy professional positions of responsibility and influence that impose on them duties correlative with their positions which is to dispense justice according to law.

[15] In my judgment, the fact that the applicant has served his sentence, by itself is not sufficient for him to come within the ambit of s 107(1) of the LPA 1976. After being convicted and sentenced, the applicant cannot argue that a concession should be accorded to him, so that he can come within the purview of s 107(1) of the LPA 1976, just because he has served his sentence. Such an argument cannot be accepted by this Court for the following reasons:

(1) there is no choice for the applicant but to serve the sentence;

(2) the mere fact that he has served the sentence, although it is a factor to consider, is not per se sufficient for him to be re-instated under s 107(1) of the LPA 1976; and

(3) if it were otherwise, there is no necessity for Parliament to enact s 107(1) of the LPA 1976

[16] It is often said that to be a member of the legal profession, one has not only to understand, but also to accept, the importance of integrity in the administration of justice and it is this quality that will ultimately endear the profession to the public

and serve the public interest. Miss SM Lim for the respondent submits that the applicant has not demonstrated that he has truly accepted this principle. She points out that, by his conduct, he has demonstrated that he does not believe that he should have been struck off the Roll despite his conviction by the highest court in this country. She advances the following reasons:

(1) the applicant has challenged all the decisions made against him by both the court and the Disciplinary Board;

(2) the applicant has exhausted every avenue of appeal that is available to him; and

(3) the applicant has spent a lot of time and effort in opposing his conviction and the decision to strike him off the Roll.

[17] Dato' Mohd Shafee Abdullah for the applicant submits that what the applicant did by going through the rigmarole of appealing through the right procedures showed that the applicant went through the process of the law that was accorded to him and to others in a like situation. He points out that the applicant should not be criticised for pursuing and exploring his legal remedies to the fullest. By comparison, the applicant in *Teoh Hooi Leong v Bar Council, Malaysia,* on his own accord, applied to have his name removed from the roll. Later, the High Court refused to restore the applicant to the roll even though the Bar Council did not object. On appeal, the then Supreme Court allowed the appeal and ordered the name of the applicant appellant to be restored to the roll. Not many applicants are like Teoh Hooi Leong, who applied on his own initiative to have his name removed from the roll. He had pleaded guilty to the charges of CBT of $99,240 under s 409 of the Penal Code and he was sentenced to 18 months' imprisonment. The sentence was reduced on appeal to three (3) months' imprisonment with a fine of $2,000. He paid the fine and he served the sentence. What Evatt CJ said in *Ex p Clyne; Re Bar Association of NSW* [1962] NSWR 709 at p 710 merits reproduction. It was this:

> After careful consideration, and with much regret, I have come to the conclusion that insufficient time has elapsed since the applicant's disbarment to justify the Court in re-admitting him. Even since his disbarment he has acted foolishly, although, to his credit, he now acknowledges this against himself.
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> The greatest difficulty I feel is that he still, to some extent, asserts that what he did was unobjectionable, and he distinguishes between what he calls his acceptance of the reasons of the High Court and his agreement with such reasons.
>
> In my opinion, it is too early for this Court to be able to say that he has reformed to the necessary extent. However, I hope that when the passage of time gives him greater maturity and a fuller understanding of his obligations, he will be able to demonstrate the sincerity in his professed repentance. In my opinion, the door must not be regarded as shut for ever.
>
> I would dismiss the application with costs.

[18] Sufficient time lapse must prevail between the time the applicant was disbarred to the time the applicant applied for reinstatement. With the passage of more time and the growing maturity of the applicant, the applicant may be able to demonstrate to the satisfaction of the Court his sincerity in repenting his past misdeeds. Sugerman J, writing a separate judgment, had this to say in *Ex parte Clyne* at p 714 of the report:

> The first care of the Court must be to require a high standard of conduct at the Bar, to insist upon its maintenance, and to guard against its being imperilled.

[19] Manning J, also writing a separate judgment, aptly said in *Ex parte Clyne* at p 715 of the report:

> It does not by any means follow that disbarment was necessarily intended to be permanent, but the burden is on the applicant to prove that there has been such a change in him as to convert him from an unfit person to a fit person in the relatively short space of time which has elapsed.

[20] But Dato' Mohd Shafee Abdullah for the applicant submits that the facts of the case of *Ex parte Clyne* are atrocious. It is like, according to him, comparing cheese with chalk. He says that the applicant in *Ex parte Clyne* wrote an article in the Nation and criticised the court (see p 713 of the report) and it is poles apart from the present case at hand. Notwithstanding the factual differences, I make reference to *Ex parte Clyne* for the principles of law which the judges there had laid down.

[21] Here, the applicant had never accepted the consequences of his conviction especially when he was struck off the roll on 12 June 2002. On 19 June 2002, he appealed against the Disciplinary Board's decision to the High Court. On 24 March 2003, the High Court dismissed the applicant's appeal. And on 21 April 2003, the applicant appealed to the Federal Court against the decision of the High Court. The Federal Court heard the appeal and dismissed the appeal with no order as to costs on 30 October 2003. The originating motion in encl 1 to restore the applicant to the roll was filed on 5 July 2005. Calculation wise the applicant filed his originating motion in encl 1 exactly one year eight months and five days after the decision of the Federal Court. The passage of time is too short for comfort.

[22] In *Teoh Hooi Leong v Bar Council, Malaysia,* the applicant graduated from the University of Singapore in 1966. On 27 June 1967 he was admitted as an Advocate and Solicitor of the High Court of Malaya and he was practising until October 1974. He was charged with CBT in 1974 and he pleaded guilty and was sentenced to 18 months' imprisonment. On appeal, his sentence was reduced to three months' imprisonment and he was also fined $2,000. He paid the fine and served the sentence. He was made a bankrupt in 1975 and in that year he voluntarily applied to have his name removed from the roll. But due to some miscommunication his name remained on the roll until 1989. However, from 1974–1987, he did not practice law but he was employed by various companies assisting in legal advice. On 10 May 1989, the applicant gave notice to the Bar Council of his intention to file an application to restore himself to the roll. The Bar Council wrote to him on 14 June 1989 informing him that it would not object to the application. Calculation-wise, the lapse of time was approximately 14 years (from 1975 to 14 June 1989). In *Re Lim Cheng Peng*, the applicant was convicted, on his plea of guilty, for CBT under s 409 of the Penal Code and was struck off the roll on 9 April 1984. In 1987, to be precise it was on 17 July 1987, he filed an originating motion to have his name restored. The lapse of time between the applicant's disbarment to his application for restoration was exactly three years three months and eight days.

Wee Chong Jin CJ (Singapore) sitting with Lai Kew Chai and Chua JJ, restored the name of the applicant to the roll. In delivering the judgment of the court, Wee Chong Jin CJ (Singapore) sounded a warning to this effect (see p 233 of the report):

> We would emphasise that this case turned entirely on its own special factual situation and should not be regarded as a precedent by those who might be minded to make such an application before the expiration of five years from the date of the order of striking off.

[23] Obviously it is also too soon for the applicant here to apply for restoration to the roll. He must be patient. He must be willing to endure the long wait before he files, once again, for reinstatement to the roll.

[24] Dato' Mohd Shafee Abdullah for the applicant submits that the applicant has repented and this is reflected, according to him, in the applicant's affidavit in support of encl 2 at para 15 thereof. With respect, para 15 of encl 2 does not show that the applicant has repented nor does it show that the applicant has apologised. In the early part of this judgment, I did say that the paragraph speaks of the applicant's hardship and humiliation after being convicted and struck off the roll and that paragraph also said that the applicant did not gain financially from the crime. However, the affidavit in support in encl 2 annexed letters evidencing support of the applicant's good character. I also take into consideration that the applicant resumed practice from 3 July 1999 to 31 December 2000 and he ceased practice on 1 January 2001. During that short period of resuming legal practice, there was no complaint against the applicant. Lest I be accused of an oversight, I must state that I am aware of the following cases that have laid down the following principles of law:

(a) *Ex p Lenehan* (1948–1949) 77 CLR 403, where the headnote states as follows:

> It is not a rule of law that an applicant for admission as a solicitor, who has been guilty of pecuniary dishonesty, cannot be allowed to proceed unless it is shown that there are some exceptional circumstances. The duty of the court, in the case of such an application, is to exercise its discretion having regard to the particular circumstances proved; a material circumstance for the court's consideration is that a completely satisfactory subsequent career on the part of the applicant, sustained over a lengthy period of time, may displace the adverse conclusions that might otherwise be drawn from an unsatisfactory beginning.

(b) *Ex p FE Maddocks Cohen (May 30,* 1956), The Weekly Notes Vol 73, 126 at p 127 where Roper CJ observed:

> In particular, he is so received by leading solicitors in the City of Newcastle, where his business is now situated, that is, by the very men with whom he would be doing business if he did business as a solicitor. That, I think, is a most relevant matter in considering whether a man is fit and proper to be admitted as a solicitor or fit and proper to be restored to the roll after his name has been removed.

(c) *In re Robins* (1865) 34 LJR 121, the short note states, inter alia, that:

> This was an application on behalf of Richard John Saltren Robins, late an attorney of Plymouth, to be restored to the roll of attornies. In the year 1857, having received

> the sum of 18l. from Mrs Smale, a client, for the purpose of paying succession duty, he appropriated it to his own use, and in Easter Term 1859 he was struck off the roll of attornies for this misconduct.
>
> He applied to be restored in Trinity Term 1860, but unsuccessfully; and again in Hilary Term 1864; but on the last occasion the Court intimated that, if after the lapse of another year the applicant was able to produce vouchers of his good conduct, they would be inclined to re-admit him.
>
> Sir RP Collier (Solicitor General) moved accordingly, on affidavits shewing the above facts, and that the applicant had repaid the money misappropriated to the representatives of Mrs Smale, deceased; that he had been employed as an attorney's clerk since he had been struck off the roll; and on affidavits of the gentlemen in whose employ he had been, and of other attornies to the number altogether of fifteen, vouching for his past good conduct; and, in addition, a memorial, signed by thirty-eight attornies of Plymouth and its neighbourhood, recommending him to the merciful consideration of the Court.
>
> No opposition being offered on the part of the Law Society, the Court (Cockburn, CJ, Mellor J and Shee J) directed that the applicant should be re-admitted.

(d) *In re Pyke* (1865) 34 LJR 121 at 124, Blackburn J, had this to say:

> I am of the same opinion. On the fact of a gentleman being disbarred, two things are to be considered on his application to be admitted to practice as an attorney: one is, whether he has suffered sufficient punishment, twenty years' exclusion may be sufficient punishment; but the other is his fitness to be trusted with the office: and the fact of his being disbarred raises a presumption against his fitness; and until he shews, not that no charge has been made against him, but, affirmatively, that during the interval his conduct has been such as to rebut the presumption against him, we cannot admit him.

[25] My main concern is the lapse of time between the date of the order striking the name of the applicant off the roll and the date of the application for restoration (*Re Lim Cheng Peng*). It is far too short a time. The applicant also has not averred that he has repented in his affidavit in support in encl 2. The applicant's age has a bearing when considering the originating motion in encl 1 (*Ex p Macaulay* [1930] 30 SR (NSW) 193). For all these varied reasons, I must dismiss encl 1. As the respondent does not insist on costs, I, therefore, make no order as to costs. This is a unanimous decision of this court.

[26] This judgment has been shown to my learned brothers, TS Nathan and Mohd Hishamudin bin Hj Mohd Yunus JJ, and they have expressed their agreement with it.

Application for restoration dismissed.

Reported by Eugene Daniel Louis